No. 09-1239

In The

Supreme Court of the United States

GERALD E. JUELS,

Petitioner,

v.

UNITED STATES POSTAL SERVICE,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

PETITION FOR REHEARING

GERALD E. JUELS
Petitioner, pro se
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Dear Honorable Justices John G. Roberts, John Paul Stevens, Antonin Scalia, Anthony Kennedy, Clarence Thomas, Ruth Bader Ginsburg, Stephen Breyer, Samuel A. Alito, Jr., Sonia Sotomayor:

There is no dispute that Title 5, United States Code, § 8151 and its implementing regulations, Title 5, Code of Federal Regulations, PART 353, Subparts A and C, and others apply to this restoration rights dispute. What is disputed are some of the facts that could waive or limit the full repayment of the law's provisions.

Petitioner stands alone asking that the facts and the law be fully complied with.

The agency has refused to do this, alleging reasons for not complying with the law that deserve a full examination.

Briefly, federal law mandated agency "make every effort" to restore petitioner to duty upon his request, which took place in mid to late May of 2005, and memorialized in his completed application for reemployment dated 05/23/05 that he submitted to agency officials on 05/24/05. This application included a questionnaire page entitled: ***UNITED STATES POSTAL SERVICE – SEATTLE DISTRICT PRE-INTERVIEW INFORMATION.***

See App. 1.

The fourth question stated the following:

> Do you currently have any physical restrictions which would prevent your (sic) from

> performing the position for which you have applied? Y N

Petitioner's response circled the Y and stated the following:

> Yes, I do have some residual back pain stemming from my 9 OCT 81 USPS injury.

The sixth question stated the following:

> Have you ever had a work related injury or accident? If yes, explain.

Petitioner's response stated the following:

> Yes, I injured my back at the Fargo, ND Post Office on 9 OCT 81.

Petitioner signed and dated this questionnaire "MAY 23, 2005."

Thus, agency was notified of petitioner's medical condition on May 24, 2005.

Agency official Ms. Sheila Bautista stated she read petitioner's application. See Seattle 04/17/08 hearing transcript at page 11, lines 16 and 17. And she stated later the following:

> I just know that you were – you left on an injury and that you were still on OWCP rules. But I don't remember reading anything, just from glancing at your application and from what you were telling me that you were still on OWCP rules.

Seattle hearing transcript at page 12, lines 13 to 17, testimony of Sheila Bautista.

In fact, petitioner did not know he was still on OWCP rules until Ms. Bautista mentioned it at her official interview of petitioner on 06/29/05, wherein she stated that she would contact OWCP "today."

During Discovery, petitioner requested a copy of his 05/23/05 dated application from the agency's Seattle office. The agency's attorney, Ms. Marcella Terry Clark, reported "difficulty" in getting Discovery documents from its Seattle office. And agency subsequently did *fail* to provide requested Discovery documents. See AGENCY'S RESPONSE TO APPELLANT'S INTERROGATORIES in M.S.P.B. Docket No. DE-0353-08-0023-I-1 dated "5th day of December 2007," at pages 5 to 6, wherein it stated the following:

> 10. Please provide me with a complete copy of my "Application For Employment" "Reinstatement Package" dated 05/23/05 with its attendant papers.
>
> *RESPONSE*: See Agency File at Tab 4(ii).

Tab 4(ii) does *not* contain petitioner's 05/23/05 documents, it contains his 09/08/06 updated application only. See Agency File at Tab 4(ii), specifically, page 16 of 26, which is the crucial page from petitioner's 05/23/05 application the agency failed to provide because it proved agency was notified of petitioner's continuing residual pain from his 10/09/81 agency injury.

Agency never requested petitioner provide medical documents of his then medical condition and agency never contended it did ask him for said documents. In fact, agency's Ms. Sue Fletcher declared that agency would *not* normally ask for an applicant's medical documents until it was prepared to offer him an employment position. See Seattle hearing 04/17/08 transcript, testimony of Ms. Susan L. Fletcher, at pages 44 to 46. Agency's Denver office did ask petitioner for his medical documents in March of 2007 and petitioner submitted them in April 2007.

This evidence refutes agency's contention that lack of petitioner's medical records precluded it from restoring him to duty in 2005 and 2006.

The law required that petitioner be given "priority consideration" for restoration to his full time regular position (*not* just in Fargo, North Dakota, and the Dakotas District) or an equivalent one agencywide or to another agency.

The record shows that petitioner was considered for only part time flexible ("PTF") clerk positions and only in the Dakotas District, and subsequently offered them as a substitute for his right to priority consideration for a full time regular ("FTR") position equivalent agencywide, or to another agency.

The record also shows that petitioner objected to these unlawful partial repayment agency offerings. And the agency provided petitioner scant information about them, and nothing about his rights and options. See agency's few letters to petitioner as proof.

Although stating that the part time position in Grand Forks would provide approximately 35-40 hours per week, in fact, it has provided petitioner only 30 hours per week. See App. 16. Most astonishingly of all, petitioner learned long after his appointment on 03/31/07 that the position only guaranteed him **two (2) hours per pay period**. See testimonies of David A. Jones, Jan Lonsdale, and Wanda L. Cleveland.

The following is an example of the agency's actions:

> Testimony of Ms. Jan Lonsdale, Manager of Injury Compensation for the agency's Western Area Operations (Regional Headquarters located in Denver, Colorado):
>
> ADMINISTRATIVE HEARING JUDGE: Go ahead and ask.
>
> **Q** (By Mr. Juels) Could you answer that, Ms. Lonsdale?
>
> **A** I frequently seek out the advice of counsel on various issues. By seeking out their advice it means that I really hold in regard what they are going to tell me. I don't know that every single time I follow to the letter every single thing that we've discussed, and I can't presume to understand their concerns all the time.
>
> **Q** And may I ask: You, yourself, personally, did you look at these particular – because there's just one statute and then there's, you know, the Code of Federal Regulation, and

only Subparts A and C of Title 5 Code of Federal Regulation Part 353 are applicable. Did you, yourself, look at the specific regulation as to what it stated must happen?

A Extensively.

Q And after scrutinizing that, did you then – I'm sorry. I'd like to ask you if you feel that you carried it out as faithfully as you understood it to state?

A Yes.

Seattle hearing 04/17/08 transcript at pages 122-23, testimony of Jan Lonsdale.

Testimony of agency's attorney Ms. Clark:

There was absolutely no information that we had from any source that indicated to us that Mr. Juels was partially recovered. And in fact, the first information that we received from OWCP in August of 2006 was that Mr. Juels was fully recovered from his work-related injury.

Based on that information, then, at no time, you know, from the May of 2005 period until we received the information in August of 2006 from OWCP had we denied Mr. Juels' restoration as a partially recovered employee or as – for any status of an employee, for that matter. We did not deny him employment.

In fact, then when we received the information from OWCP that he was fully recovered, we applied the provisions of the

> restoration regulations concerning a fully recovered individual and we looked for work for Mr. Juels according to the fully recovered provisions.

Seattle hearing 04/17/08 transcript at page 195, testimony of Marcella Terry Clark.

> Testimony of Ms. Jan Lonsdale:
>
> **Q** Well, under 353.301(b), fully recovered after one year, the regulation states in part:
>
> > "An employee who is separated because of a compensable injury and whose full recovery takes longer than one year from the date eligibility for compensation began, dot, dot, dot, is entitled to priority consideration Agency wide for restoration to the position he or she left, or an equivalent one, provided he or she applies for reemployment within 30 days of the cessation of compensation, dot, dot, dot. If the individual cannot be placed in the former commuting area he or she is entitled to priority consideration for an equivalent position elsewhere in the Agency."
>
> So I guess what I'm trying to elicit is some understanding as how one can rationalize a part-time flexible position, wherein one is only guaranteed two hours of work every two weeks, with that on a full-time regular position, which is guaranteed 40 hours of work per week, holiday pay, et cetera, et cetera. Could you please explain that for me?

A I can't rationalize that, as you put it. I made an offer, or the postal service made an offer to you which you accepted.

Q Do you think that was a fair, reasonable offer?

A Yes, I do.

Fargo hearing 06/18/08 transcript at pages 68-69, testimony of Jan Lonsdale.

When asked if she was aware of APWU-USPS Collective Bargaining Agreement, Article 21.4, Ms. Lonsdale replied, "I'm aware of the Article."

Fargo hearing 06/18/08 transcript at pages 77-78, testimony of Jan Lonsdale.

APWU-USPS COLLECTIVE BARGAINING AGREEMENT 11/21/06-11/20/10

Article 21

Section 4. Injury Compensation

Employees covered by this Agreement shall be covered by subchapter I of Chapter 81 of Title 5, and any amendments thereto, relating to compensation for work injuries. The Employer will promulgate appropriate regulations which comply with applicable regulations of the Office of Workers' Compensation Programs and any amendments thereto.

In the S'arah White v. United States Postal Service (1990) the M.S.P.B. stated:

The question in this case, then, is whether any provision of the Collective Bargaining Agreement precludes the appellant from being granted the 1966 seniority date, yet is nonetheless consistent with the make-whole remedy provided by section 8151 of the Compensation Act. The agency asserts that Article 37.2.D.6 prevents the appellant from being granted a seniority date of 1966. This provision states in relevant part:

> Reemployment After Disability Separation. On reinstatement or reemployment after separation caused by disability, retirement or resignation because of personal illness . . . , the employee receives seniority credit for past service for the time on disability retirement or illness if reinstated or reemployed in the same postal installation and craft and in the same or lower PS salary level from which originally separated; provided application is made within six (6) months from the date of recovery. The date of recovery in the case of disability retirement must be supported by notice of recovery from the Bureau of Retirement Insurance and Occupational Health, Civil Service Commission, and in the case of resignation due to illness, by the statement from the applicant's attending physician or practitioner.

Reviewing this Article, we note that it applies to the reemployment of an employee who is separated because of personal illness, rather than to the restoration of an employee who is separated because of a compensable injury. Moreover, the provision sets a six-month time period for seeking reinstatement, while an employee applying for restoration under the Compensation Act must do so within 30 days of cessation of compensation. 5 C.F.R. § 353.307. Further, that part of the article which sets forth what proof is necessary to establish recovery refers only to Civil Service disability retirement or resignation due to illness. It makes no mention of recovery from a compensable injury under the Federal Employee Compensation Act. We find therefore that this provision is not applicable to an employee who sustains a compensable injury and applies for restoration under the Compensation Act once benefits were terminated. (Footnote omitted.)

While we have determined that Article 37.2.D.6 is not applicable to the restoration of an employee whose OWCP benefits have been terminated, another provision of the Collective Bargaining Agreement is relevant. Specifically, Article 37.2.D.7 applies when an employee voluntarily accepts a transfer from one installation to another. It states in relevant part:

> Changes in Which Seniority is Lost
>
> ***Except as specifically provided elsewhere in this Agreement***, a full-time employee begins a new period of seniority:
>
> a. When a change is:
>
> (1) From one postal installation to another at the employee's request.

Emphasis added.

CONCLUSION

Agency failed to offer petitioner priority consideration for a full time position agencywide or in other agencies, and it failed to use APWU-USPS Collective Bargaining Agreement, Article 21.4 in appointing petitioner to a full time position in Grand Forks. See USPS-APWU Case No. HOC-3N-C 418, Snow National Arbitration Award (1994); Case No. B00C-4B-C 06137362, LaLonde Arbitration Award (2008); and Larry L. Withers v. Department of the Air Force (1985). See petitioner's M.S.P.B. closing argument of July 11, 2008, at attachments A, B, and C.

Finally, the record evidences agency's reception of petitioner's December 20, 2006 Express Mail next day delivery letter on December 26, 2006. Yet, agency's Ms. Lonsdale "don't recall" ever receiving it.

> **Q** And I'd like to direct your attention to Tab 4 P as in Pennsylvania, Page 5. I guess –

I'm sorry. May I ask you if you recall a letter that I sent to you in December of 2007 pertaining to various positions that you offered me?

A In December of 2007 I was retired.

Q Oh. I'm sorry. 2006. Yeah, December of 2006.

A I recall the letter that you sent to me that you actually faxed to me because of a snowstorm; is that what you're referring to?

Q Yes, yes.

A Yes.

Q And in that letter, because of the snowstorm, do you remember that I sent a letter in an envelope that you provided me express mail overnight delivery?

Q And because of the snowstorm it never made it, you know, in the time limit that was given?

A I don't recall if it did or didn't. I did receive the fax timely, however.

Q Okay. And I think that's at 4 Q. Yes, it is. And if we could go to Page 5 of that Tab 4 Q, and I'm referring to the second to the last paragraph. And are you familiar with writing this paragraph?

A May I ask you –

> **Q** I'm sorry. I wrote that paragraph. I'm sorry. But do you recall receiving this and reading it?
>
> **A** Yes, at that time. That's been quite a while ago, however.
>
> **Q** And of course, you know, my concern is that a part-time position was not equivalent with a full-time position?
>
> MS. CLARK: Judge, again, I'm going to object. That goes to the issue of the restoration as a fully recovered individual, that part of the case. Today we are here on the partially recovered part of the case.

Seattle hearing 04/17/08 transcript at pages 123-24, testimony of Jan Lonsdale.

The evidence shows that petitioner's 12/20/06 Express Mail next delivery letter # EL170142105US was mailed on 12/20/06. See Agency's File at Tab 4q, page 8 of 8. And the evidence further shows that this same Express Mail letter # EL170142105US "was delivered" to the agency "at 10:36 am on December 26, 2006 in DENVER, CO 80299. The item was signed for by A 103."

See App. 22, which is USPS' Track & Confirm computerized document for this letter.

Thus, the agency had no reasonable justification to rely on a fax memo page written in pencil when it had the petitioner's original letter with his hand-signed signature in ink. Moreover, the agency

obstructed and obfuscated the inquiry into this matter by substituting a barely legible faxed letter in its vetted Agency's File when it had the clearly legible original letter. Petitioner believes agency did this in order to deny responding to petitioner's objections of receiving shortchanged position offerings for the full time regular positions he had a right to be considered for.

AN ANALOGY

Government A owes Citizen J "priority consideration" for a full time regular ("FTR") position agencywide/governmentwide. Government A acknowledges debt owed to Citizen J but pleads penury and explains it has no FTR positions in the district in which he accrued the government's debt and from which he can only be repaid. Government A explains the best it can do and sends Citizen J eleven part time flexible ("PTF") position offerings from which to select one in consideration for its debt to him. (The debt is 80 hours guaranteed work per pay period which is every two weeks, etc.) Citizen J objects to Government A's offerings, but selects one, under protest, offering the most hours and sues Government A for the balance of the debt owed.

ANALYSIS

By pleading penury, controlling the communication delivery system, providing scant information about Citizen J's right to full debt recovery, and

providing him with a short turnaround deadline for receiving at least some form of re-payment, Government A extracted an arguable acceptance (under protest/objection) from Citizen J for the short-changed offering at Grand Forks, which advertised an approximate 70 to 80 hours of work per pay period, but in fact, guaranteed only two (2) hours work per pay period – a fact concealed from Citizen J and only discovered by him long after his reemployment at Grand Forks.

TAKEAWAY LESSON

Is this the kind of justice governments should impose upon its citizens? Can you Honorable Justices stand by and allow this sharp business practice by the government to represent government justice? Because if you can and do, then petitioner may just fulfill his debt obligation to the government in the same manner. After all, government is the great teacher of proper behavior in society. Its actions are the model for its citizens to follow. Do we really want to encourage sharp business tactics?

Scores of federal civilian employees who have been injured in the line of duty, recovered, and sought restoration, and who have received similar treatment as petitioner, pray that you Honorable Justices grant this petition and order a complete review and an examination into these agency denials of formerly injured in the line of duty employees' restoration rights.

I have run out of time to continue.

Thank you for your consideration.

Respectfully submitted,

GERALD E. JUELS
Petitioner, pro se
2402 30th Avenue S., Apt. 1A
Grand Forks, ND 58201
(701) 757-0148

CERTIFICATE OF COUNSEL

I hereby certify that this Petition for Rehearing is submitted in good faith and not for delay. This Petition for Rehearing is restricted to the grounds set out in Rule 44.2.

GERALD E. JUELS

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UNITED STATES POSTAL SERVICE
– SEATTLE DISTRICT

PRE-INTERVIEW INFORMATION

DATE: MAY 23, 2005 SSN: [Omitted]

FULL NAME: GERALD EDWARD JUELS

ADDRESS: [Omitted]

CITY/STATE/ZIP: DES MOINES, WA 98198

PHONE NUMBER: [Omitted]

DATE OF BIRTH: [Omitted]

MALE ✓ FEMALE ___

- If you served in the Military, indicate branch, dates of service and rank.

  U.S. MARINE CORPS, 20-08-73 to 29-11-73, Private (E-1)

- If you have Postal experience, indicate if Career/ Casual, dates and location.

  Career: DES MOINES, IA JAN '74 – SEPT '75; PROVO, UT SEPT '77-1979 LUBBOCK, TX MAY '76 – SEPT '77; FARGO, ND 1979-PRESENT

- If you have worked for the Federal Government in a civilian capacity, indicate the Agency and dates of service.

  NONE

- Do you currently have any physical restrictions which would prevent your from performing the position for which you have applied? [Y] N
  If yes, explain why.

Yes, I do have some residual back pain stemming from my 9 OCT 81 USPS injury.

- Do you have any commitments that may interfere with your availability for work? If yes, explain why.

NONE

- Have you ever had a work related injury or accident? If yes, explain.

Yes, I injured my back at the Fargo, ND Post Office on 9 OCT 81.

- How many days in the past 2 years have you missed work due to illness?

NONE

- If presently employed, how much notice to employer are you requesting?

NONE

Applicant signature /s/ Gerald E. Juels

Date: May 23, 2005

TO WHOM IT MAY CONCERN:

RETURN TO WORK STATEMENT
FOR GERALD JUELS

This patient, Gerald Juels, first came to me on 05/27/05 requesting a physical examination be done. After examining him, I recommended that he could return to work at the post office with light duty ("light work") restrictions.

According to the patient, he injured his back at the post office trying to catch a 120 pound sack of mail that was falling off several other sacks. This 10/09/81 injury required postal officials to take him to the emergency room of a near-by hospital for treatment. Since then, he was seen and treated by several doctors (some of whom recommended surgery) in the Fargo, North Dakota area. Because of this injury, this patient says he has been unable to work from 10/09/81 through May 2005.

X-rays of the patient's back were taken and they revealed a spondylolisthesis. It seems likely that the patient's 1981 traumatic injury at the post office aggravated his (to then) asymptomatic spondylolisthesis (patient stated he had no symptoms before 10/09/81) and caused it to become symptomatic. Patient states that he has had varying amounts of back pain ever since (i.e., he still has remnants of the 1981 injury) which has limited his activities and reduced his quality of life.

This is not unusual.

Whether this patient's spondylolisthesis is congenital or caused by his traumatic postal injury is unknown (no x-rays before 1981 were taken). However, it seems reasonable to believe that his traumatic postal injury caused his symptomatic spondylolisthesis. Or, in other words, it would seem unreasonable to believe that his traumatic postal injury did not cause his symptomatic spondylolisthesis.

Once symptomatic spondylolisthesis becomes part of a patient's life, it can be difficult to treat. Flare-ups (painful episodes) can and do take place at any time and without regularity. (Generally, exercise exacerbates it, and rest relieves it.) During one of this patient's recent flare-ups, I referred him to have an MRI test done (06/30/06). It confirmed the spondylolisthesis diagnosis and showed moderate nerve root narrowing. "This would effect the L5 nerve roots" wrote radiologist Vikas Vij, M.D.

The patient stated that he requested job restoration in May 2005. When that did not happen soon enough, he started working as a security officer in August 2005. This job primarily entails "observing and reporting activities", according to the patient. "There is no heavy lifting involved." The patient states that he has "never been late for work" and he has "never missed a day of work for any reason."

To conclude, I believe this patient can manage his symptomatic spondylolisthesis conservatively (as he has reportedly done over the last many years) and thereby reduce his risk for future surgery, if he can be

restored to his former job with some restrictions on lifting. And this is my recommendation at this time.

/s/ Benjamin O. Dy, M.D. July 20, 2006
BENJAMIN O. DY, M.D. Date

Address: 10555 S.E. Carr Road
Renton, WA 98055
(425) 255-2273

File Number: 120053861
finalterm-D-FT

U.S. DEPARTMENT OF LABOR

EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 14 SEA
LONDON, KY 40742-8300
Phone: (206) 398-8100

August 11, 2006

Date of Injury: 10/09/1981
Employee: GERALD E. JUELS

GERALD E JUELS
PO BOX 637
TACOMA, WA 98401

Dear Mr. JUELS:

Your claim for medical and wage loss benefits has been terminated effective 08/11/2006 for the reason stated in the enclosed copy of the Notice of Decision.

The termination of wage loss benefits will cease all OWCP deductions for your health and life insurance benefits premiums. Contact the Office of Personnel Management or your agency for further information on continued coverage.

Under the regulations of the Office of Personnel Management (OPM), an employee who recovers from a work-related injury within one year is entitled to be restored to the job held when injured, or equivalent. Such an employee is expected to apply for re-employment with their agency immediately upon recovery. An employee who takes more than one year

to recover is entitled to priority consideration, provided they apply for reemployment within 30 days after compensation ends.

This decision was based on all evidence of record and on the assumption that all available evidence has been submitted. If you disagree with the decision, you should carefully review the attached appeal rights, and pursue whichever avenue is appropriate to your situation.

Sincerely,

/s/ Lisa J. Hoffer
Lisa J. Hoffer
Senior Claims
Examiner

/s/ Art Baniqued
Art Baniqued
Senior Claims
Examiner

Enclosures: Appeal Rights
Notice of Proposed Decision with Enclosures
Notice of Decision

US POSTAL SERVICE
DAKOTAS PERFORMANCE CLUSTER
INJURY COMPENSATION OFFICE
PO BOX 7560
SIOUX FALLS, SD 57117

U.S. HealthWorks

February 27, 2007

Title:	US Postal Service Focused Medical Evaluation
Requested by:	Anita L. Sumpter, RN
Examinee:	Gerald E. Juels
Position applied for:	Mail Processor/Clerk
Examiner:	Catherine E. Smith, M.D.
Location:	US HealthWorks Clinic Aurora Clinic Seattle, WA.

Issues to be addressed at this focused evaluation are:

1. Back injury in 1981.

The following were reviewed prior to the evaluation:

1. Flagged responses report.
2. PS form 2591 (application for employment).
3. Work history sheet.
4. Functional requirements for above position.
5. Patient's medical records.

Medical History:

Mr. Juels is a 56-year-old gentleman who is referred today by the US Postal Service for a focused medical evaluation prior to reinstatement as a mail processor/clerk. He has been treated in the past for a back injury and is here for evaluation of that injury. The patient denies a history of back problems prior to the 1981 accident, other than a mild limited back strain in the mid 70s. In 1981, he was unloading heavy mail bags (the patient states that they were greater than

100 lbs) and twisted as he tried to catch a falling bag. He had "excruciating" pain in the back and pain into his legs. He sought treatment and this was initially diagnosed as a lumbar strain. After he failed to improve, x-rays were done and he was diagnosed with spondylolisthesis. He did seek a specialist's opinion and surgery was recommended for this. The patient declined surgery and instead wanted to do conservative care. He was treated by physical therapy and chiropractic. He describes that he had a constant ache in his back with occasional sharp pains with sudden movements. He was fully disabled from work from 1981 until 2005. At that time, he consulted his doctor and his doctor said that he could lift up to 30 to 40 lbs. At that point he also was recommended to do some core strengthening exercises, which he began approximately a year and a half ago. He has been compliant with his exercises and states that this has dramatically helped his back symptoms. He currently denies any symptoms of back pain or any limitation. He does not have any numbness, tingling, or back pain. The last medication that he took for his back was in June 2006. He had a mild self limited episode of back pain.

MRI done 6/2006 (reviewed today) was found to show grade-1 spondylolisthesis at L5-S1 with moderate bilateral L5-S1 neuroforaminal stenosis as a result of a disc protrusion and spondylolisthesis, mild degenerative changes at L1-L2 and L4-L5, but no central canal stenosis. He does not currently take any medications for back pain. He has never had any back

surgery. He states he has been working since 2005 as a security guard without any problems until September 2006 and now he is currently applying for reinstatement with the post office as a clerk.

Physical Exam:

The patient is a pleasant, thin, well-developed, well-nourished man with good muscle definition Vital signs: Height 5'11". Weight 180 lbs. Pulse 80. Blood pressure 126/80. Respiratory rate 16. Temperature 98.2 F. He moves easily throughout the exam with normal gait and no guarding. He is alert and oriented x3. On inspection of his back, there is no obvious deformity or surgical scar. Palpation of the vertebral column yields a palpable stepoff at the L5-S1 interspace. There is no increased muscle tone through the cervical, thoracic, or lumbar paravertebral musculature. Range of motion of the neck is full and without guarding in all directions. Range of motion of the lumbar spine is as follows: The patient is easily able to touch his toes. He has comfortable full extension to 30 degrees. Lateral flexion is full and comfortable at 30 degrees bilaterally. Rotation is 30 degrees bilaterally without guarding. Chest is clear to auscultation bilaterally. Cardiovascular: Regular rate and rhythm. No murmurs, rubs, or gallops. Lower extremities show symmetric normal muscle development. Pulses are 2+ and symmetric at the dorsalis pedis. Sensation is intact over the major nerve distributions of the lower extremities. Patient is able to walk on heels and toes. No EHL weakness. Reflexes at the patella are 2+ and symmetric.

Reflexes at the Achilles are slightly decreased at 1+ on right and left extremities. No skin lesions.

Assessment:

1. Spondylolisthesis, grade 1.

Recommendations:

The patient was diagnosed in 1981, following acute back strain, with spondylolisthesis, which caused prolonged disability until 2005. He currently is not having any symptoms. However, with the findings of grade-1 spondylolisthesis, he should have some mild limitation on his job activities. I would recommend no greater than 50-lb lift, pull or push, and no prolonged forward bending/flexion activities. He is okay for intermittent stooping and bending, but prolonged bending should be avoided, as this may cause an exacerbation of the spondylolisthesis and worsening back symptoms.

Sincerely,

/s/ Catherine Smith MD
Catherine E. Smith, M.D.

CES/ILHS/nsp
T: 02/28/07

USPS MEDICAL ASSESSMENT

JUELS, GERALD E	XXX-XX-XXXX	2/24/07
Examinee's Name (Last First MI)	**Social Security No**	**Date Completed**

CITY: **NORTH DAKOTA**

CRAFT: **MAILPROCESSOR/CLERK**

SUMMARY OF MEDICAL FINDINGS: Explain in detail any abnormality noted in History or Physical (insert Narrative Report as Indicated) Additional pages may be attached.

HP1 – denies w/o back probs prior to 1981 accident – was unloading mail sacks (>100# per pd) and twisted to catch a falling bag. Had "excruciating" pain and pain into legs. Diagnosed – L-strain initially, then spondylolisthesis later. Pt declined surgery + did PT + chiro only. Had constant ache – occasional sharp pains. Was fully disabled until 2005, at which point pt's doctor said he could lift up to 30-40#'s. Pt also started exercising regularly in 2005. He currently denies any symptoms of back pain or limitation. MRI 6/06 – grade I spondylolisthesis – mod bilat foraminal stenosis.

Exam palpable step-off @ L5-S1, otherwise normal full ROM nontender

A – spondylolisthesis, grade I.

Medical Assessment: Note: Based upon a review of your findings above and the physical and environmental functions of the position, indicate your assessment of Examinee's risk of incurring job related injury or illness, within the next six months, due to existing or past medical conditions.

☐	A	No Medical Limitation or Restriction: Examinee is medically qualified to perform the functions of the position.
☒	B	Moderate Risk/Restriction: Examinee would be medically qualified to perform the functions of the position only if below noted limitations/restrictions can be accommodated. (See below)
☐	C	High Risk: Examinee is not medically qualified to perform essential functions of the position. Accommodations will not reduce medical risk or restriction. List significant findings in lay terms – no diagnosis, observe privacy considerations.

Write in Limitations/Restrictions

Limit lift/pull/push to < 50#
No prolonged forward bending/flexion from waist

Physician's Name	(Please Print Last Name, First Name, MI) CATHERINE SMITH, M.D.	Date 2/24/07
Physician's Signature	/s/ Catherine Smith M.D.	
Address	U.S. HealthWorks 8313 Aurora Ave N Seattle, WA 98103	(206) 784-0737

City	State	ZIP+4

Richard R Wagoner, Associate Area Medical Director
(Report Review)

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ATTN: MERILEE A RETZLOFF
10700 27TH AVE S RM LB
TUKWILA WA 98168-1884

*** Restricted Information ***

RICHARD WAGONER
Room LB102
10700 27TH AVE S
TUKWILA WA 98168-1884

Date:	February 27, 2007
Subject:	Request for Medical Information
Candidate Name:	GERALD E JUELS
SSN:	***-**-****

Dear Dr. Wagoner:

The above named applicant has applied for a position as a Mail Handler. I have enclosed a signed release for medical information and the functions of the position.

The applicant has indicated the presence of the following medical condition and has identified you as the treating physician:

On 02/27/2007 at 03:15 PM Tanya Daniels wrote:
Please see Dr. Smith's FE report.

In order to proceed with the medical assessment, the following documentation must be provided. A prompt response, within 14 days, is requested. The above named applicant is responsible for any charge for this information. Please return your letter and any

additional information to me at the above address. If you have any questions please contact me by phone, (206) 768-4307, or fax, (206) 768-4309.

The documentation should include all the following: (additional pages may be added)

	Month/Year
Onset of condition	___/___
Date of office evaluation	___/___

Diagnosis:

MODERATE RISK/RESTRICTION:
– NO LIFTING OVER 50 POUNDS

Evaluation: Please provide copies of current reports if applicable (lab studies, x-ray, etc.)

– NO PUSHING OR PULLING WITH OVER 50 POUNDS OF FORCE

Treatment plan: (medication, physical therapy, surgery, hospitalization, etc.)

– NO PROLONGED FORWARD BENDING AT WAIST. MAY STOOP AND BEND ON AN INTERMITTENT BASIS

Your current assessment of condition as to prognosis, stability.

Indicate any and all physical restrictions and/or accommodations required.

Physician's signature /s/ R Wagoner MD Date 3/5/07

HUMAN RESOURCES/INJURY COMPENSATION
DAKOTAS DISTRICT

[LOGO] ***UNITED STATES***
POSTAL SERVICE

May 5, 2010

EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 12 DEN
LONDON KY 40742-8300

RE: Gerald E Juels, Claim No. 122058445
DOI: 07/06/2009

In response to your letter of April 9, 2010:

Mr. Juels has been a PTF clerk since returning to the postal service in 2007.

His work hours vary from day to day or week to week. Since Mr. Juels has worked more than a year prior to his date of injury, his established average hours worked prior to one year of date of injury (7/6/2009) were 30 hours/week.

His salary on the date of injury was $26.26/hour. His hourly rate changed to $26.55 per hour on November 21, 2009.

Attached are two sheets giving information on the date of injury (7/6/09) and on the date of 3/11/2010.

Please contact me if there is more information needed.

/s/ Kathy Hay
Kathy Hay
Health & Resource Management Specialist

cc: Gerald Juels

Enc.

File Number: 122058445
1030-nyc-O-P

File Number: 122058445
Employee: GERALD E. JUELS

1. For the job held on date of injury ~~and on 3/11/2010~~ 7/6/09, please state:

a. The kind of appointment the employee held (i.e. term, or temporary): PTF Clerk

b. The employee's tour of duty (i.e., full-time, part-time, intermittent, or seasonal): Part Time

c. If seasonal, was there any expectation of recurrent employment (i.e., in subsequent seasons)? If so, please provide a copy of the personnel actions (S-50) or other written agreement to that effect. N/A

2. For the year immediately prior to the injury ~~and prior to 3/11/2010~~ of 7/6/09 → See Pg 2, please state:

a. The employee's gross pay, exclusive of overtime: 42,481.74

b. The amount of night differential or other special pay increments included in the gross pay: $1808.70 – ND, AL = $3307.45 SL = $1575.60

c. The amount of Sunday premium or holiday pay included in the gross pay: 0

d. The number ~~of days and~~ hours worked.
1348.21 Regular work hrs

If the employee's work schedule was other than full-time, please provide the actual earnings of another employee with the same kind of appointment and working in a job with the same or similar duties. The employee whose earnings are stated should be the individual working the greatest number of hours in similar employment during the year immediately prior to the date of injury and prior to 3/11/2010. State the position held by the employee and period covered by the reported earnings: _____

_____

By: /s/ Kathy Hay

Title: HRM Specialist

Date: 5/5/2010

File Number: 122058445
1030-nyc-O-P

File Number: 122058445
Employee: GERALD E. JUELS

1. For the job held on ~~date of injury and~~ on 3/11/2010, please state:

a. The kind of appointment the employee held (i.e. term, or temporary): Part Time flexible (PTF) clerk

b. The employee's tour of duty (i.e., full-time, part-time, intermittent, or seasonal): Part Time

c. If seasonal, was there any expectation of recurrent employment (i.e., in subsequent seasons)? If so, please provide a copy of the personnel actions (S-50) or other written agreement to that effect. N/A

2. For the year immediately prior ~~to the injury and prior~~ to 3/11/2010, please state:

a. The employee's gross pay, exclusive of overtime: 39951.64

b. The amount of night differential or other special pay increments included in the gross pay: $2197.84 – ND, AL = $3580.64, SL = $844.96

c. The amount of Sunday premium or ~~holiday pay~~ included in the gross pay: 130.89

d. The number ~~of days~~ and hours worked.
Regular work hrs – 1287.16

If the employee's work schedule was other than full-time, please provide the actual earnings of another employee with the same kind of appointment and working in a job with the same or similar duties. The employee whose earnings are stated should be the individual working the greatest number of hours in similar employment during the year immediately prior to the date of injury and prior to 3/11/2010. State the position held by the employee and period covered by the reported earnings: _____

_____

By: /s/ Kathy Hay

Title: HRM Specialist

Date: 5/5/2010

_____

[LOGO] UNITED STATES
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